



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 5, 1998

Ms. Lisa Ortiz Aguilar
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR98-0017

Dear Ms. Aguilar:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 112039.

The Parks and Recreation Division of the City of Corpus Christi (the "division") received an open records request from the mother of a child who was injured during a fight at an after-school "latchkey" center operated by the division. Specifically, the requestor seeks "each individual incident report" pertaining to the incident. You have submitted to this office as responsive to the request a single incident report completed by one of the division's employees and several attached witness statements.

You contend that the names, addresses, and telephone numbers of the witnesses to the incident are protected by common-law privacy as incorporated into section 552.101 of the Government Code. Section 552.101 protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information coming within the common-law right to privacy. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85.

After reviewing the documents before us, the only information this office could discern as possibly coming within the common-law right of privacy is information pertaining to the requestor's child, to which she has a special right of access pursuant to section 552.023 of the Government Code. Consequently, the division may not withhold any information from the requestor on privacy grounds.¹

¹Your reliance on *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied) is misplaced. *Ellen* concerned an investigation of sexual harassment that implicated individuals' privacy interests. Such considerations are not present here and we decline to extend the rationale of the holding in *Ellen* to the present circumstances.

You also contend that the statements and identities of the juveniles that are accused of participating in the fight are made confidential under the Family Code. Section 58.007(c)² of the Family Code provides in pertinent part:

(c) Except as provided by Subsection (d), *law enforcement records and files* concerning a child may not be disclosed to the public and shall be:

(1) kept separate from adult files and records; and

(2) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B. [Emphasis added.]

You have not demonstrated, nor does this office believe, that the records at issue constitute "law enforcement records and files" that are made confidential under section 58.007 of the Family Code. We therefore conclude that these records are not confidential under the Family Code, and that in this instance the division must release the requested documents in their entirety.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Hastings
Assistant Attorney General
Open Records Division

KHH/RWP/rho

Ref.: ID# 112039

²We assume you intended to raise section 58.007 of the Family Code, not section 58.005, which you cite in your brief and which concerns "[i]nformation obtained for the purpose of diagnosis, examination, evaluation, or treatment or for making a referral for treatment of a child by a public or private agency or institution providing supervision of a child by arrangement of the juvenile court or having custody of the child under order of the juvenile court."

Enclosures: Submitted documents

cc: Ms. Diana Garcia
1522 Greengrove
Corpus Christi, Texas 78415
(w/o enclosures)